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PATENT  
Attorney Docket No. 1435-202

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
 )  
Jean-Pierre Isnard et al. ) Group Art Unit: 1713  
 )  
Application No.: 10/520,903 ) Examiner: William K. Cheung  
 )  
Filed: January 11, 2005 )  
 )  
For: Process for the (Co-)Polymerisation of ) Confirmation No.: 4797  
Olefins in the Gas Phase )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR WITHDRAWAL OF FINAL OFFICE ACTION**

In the Office Action of June 22, 2007 the Examiner withdrew all grounds of rejection set forth in the Office Action of January 5, 2007. See paragraph 2 of the Office Action. However, now he rejects all of the claims under 35 U.S.C. §103(a) for being obvious over a newly cited reference to Wirth. (U.S. 4,316,825) in view of Durand et al.. See paragraph 4 of the Office Action. This is a new ground of rejection relative to the previous Office Action.

M.P.E.P. §706.07(a) clearly provides as follows:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement . . . . Furthermore, a second or any subsequent action on the merits in any application . . . will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement . . . of any claim not amended by applicant . . . in

spite of the fact that other claims may have been amended to require newly cited art.

In the Amendment filed April 5, 2007, claim 1 was only amended to place the claim in more traditional U.S. format. The scope of the claim remained the same. Thus it is not seen how this amendment of claim 1 "necessitated" the new ground of rejection. In fact, if the Examiner still believed claim 1 as originally filed was anticipated by Durant for the reasons set forth in the Office Action of January 5, 2007, then claim 1 in the Reply filed April 5, 2007 should also have been considered anticipated by Durant. On the contrary, because of the arguments for patentability set forth in the Reply filed April 5, 2007, the Examiner obviously now believed that claim 1 as originally filed or as in the Reply of April 5, 2007 was not anticipated by Durant. See paragraph 2 of the Office Action.

Thus the rejection set forth in the Office Action of June 22, 2007 based on Wirth in view of Krause was not necessitated by applicants' Amendment, but rather by the Examiner changing his mind. In such a case, and under the requirements of M.P.E.P. §706.07(a), the Office Action should not have been made a final rejection and should be withdrawn. Applicants should be given the opportunity to fully respond to the Office Action of June 22, 2007 and the newly cited reference to Wirth without being restricted by the requirements of Rule 116.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: August 29, 2007

By: 

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